

## FEDERAL RESERVE SYSTEM

Allied Irish Banks, p.l.c.  
Dublin, Ireland

### Order Approving Acquisition of Shares of a Bank Holding Company

Allied Irish Banks, p.l.c. (“Allied Irish”), a bank holding company within the meaning of the Bank Holding Company Act (“BHC Act”), has requested the Board’s approval under section 3 of the BHC Act (12 U.S.C. § 1842) to acquire up to 25 percent of the voting shares of M&T Bank Corporation (“M&T”)<sup>1</sup> and thereby indirectly acquire shares of M&T’s subsidiary banks, including its lead subsidiary bank, Manufacturers and Traders Trust Company, both in Buffalo, New York (“Trust Company”).<sup>2</sup> In addition, Allied Irish has requested the Board’s approval under section 4(c)(8) and (j) of the BHC Act (12 U.S.C. § 1843(c)(8) and (j)) and section 225.24 of the Board’s Regulation Y (12 C.F.R. 225.24) to acquire shares of nonbanking subsidiaries of M&T.<sup>3</sup> Allied Irish also has

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<sup>1</sup> Under the terms of the proposal, Allied Irish would sell its wholly owned subsidiary bank holding company, Allfirst Financial Inc., Baltimore, Maryland (“Allfirst”), to M&T in exchange for the shares of M&T and other consideration. M&T and Trust Company have filed related applications with the Board to acquire Allfirst and Allfirst’s nonbanking subsidiaries; to merge Allfirst’s lead subsidiary bank, Allfirst Bank, also in Baltimore, into Trust Company; and for Trust Company to retain and operate branches at the locations of Allfirst Bank’s offices. By order dated today, the Board has approved the M&T proposal. M&T Bank Corporation (Order dated March 11, 2003) (“M&T Order”).

<sup>2</sup> M&T’s other subsidiary bank is M&T Bank, N.A., Oakfield, New York.

<sup>3</sup> Allied Irish proposes to acquire shares in: (1) Martindale Andres & Company, LLC, West Conshohocken, Pennsylvania, and thereby engage in financial and investment advisory activities pursuant to section 225.28(b)(6) of Regulation Y (12 C.F.R. 225.28(b)(6)); and (2) Keystone Financial Life Insurance Corporation, Phoenix, Arizona, and thereby engage in providing

applied under section 211.22(b)(2) of Regulation K (12 C.F.R. 211.22(b)(2)) to change its home state for purposes of the International Banking Act (12 U.S.C. § 3101 et seq., “IBA”) from Maryland to New York.

Notice of the proposal, affording interested persons an opportunity to comment, has been published (67 Federal Register 69,223 (2002)). The time for filing comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in sections 3 and 4 of the BHC Act.

Allied Irish, with total assets of \$87.3 billion, is the largest banking organization in Ireland.<sup>4</sup> Through Allfirst, it operates banks in Delaware, the District of Columbia, Maryland, Pennsylvania, and Virginia. Allied Irish also operates a branch in New York, New York, and representative offices in Atlanta, Georgia; Chicago, Illinois; Los Angeles, California; Philadelphia, Pennsylvania; San Francisco, California; and White Plains, New York.

M&T, with total consolidated assets of \$34.1 billion, is the 33<sup>rd</sup> largest commercial banking organization in the United States.<sup>5</sup> M&T operates banks in Maryland, New York, Pennsylvania, and West Virginia.  
Interstate Analysis

Section 3(d) of the BHC Act allows the Board to approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of the bank holding company if certain

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credit insurance as principal, agent, or broker pursuant to section 225.28(b)(11) of Regulation Y (12 C.F.R. 225.28(b)(11)).

<sup>4</sup> Asset data and ranking are as of September 30, 2002, and are based on the exchange rate then available.

<sup>5</sup> Asset data and ranking are as of September 30, 2002. All other banking data are as of June 30, 2002, unless otherwise noted.

conditions are met. For purposes of the BHC Act, the home state of Allied Irish is Maryland, and Allied Irish proposes to acquire banks in Maryland, New York, Pennsylvania, and West Virginia.<sup>6</sup>

The Board may not approve a proposal subject to section 3(d) if, after consummation, the applicant would control more than 10 percent of the total deposits of insured depository institutions in the United States.<sup>7</sup> In addition, the Board may not approve a proposal if, after consummation, the applicant would control 30 percent or more of the total deposits of insured depository institutions in any state in which both the applicant and the organization to be acquired operate an insured depository institution, or such higher or lower percentage as established by state law.<sup>8</sup>

On consummation of this proposal and the related acquisition of Allfirst by M&T, Allied Irish would control less than 1 percent of the total deposits of insured depository institutions in the United States. Allied Irish

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<sup>6</sup> A bank holding company's home state is the state in which the total deposits of all banking subsidiaries of the company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later. 12 U.S.C. § 1841(o)(4)(C). For purposes of section 3(d) of the BHC Act, the Board considers a bank to be located in the states in which the bank is chartered, headquartered, or operates a branch.

Pursuant to the IBA and section 211.22(b)(2) of Regulation K (12 C.F.R. 211.22(b)(2)), Allied Irish has applied to change its home state from Maryland to New York on consummation of the proposed transaction. The Board has determined that Allied Irish satisfies the criteria for changing its home state and that allowing the proposed change would be consistent with competitive equity between foreign and domestic banks.

<sup>7</sup> 12 U.S.C. § 1842(d)(2)(A). Insured depository institutions include all insured banks, savings banks, and savings associations.

<sup>8</sup> 12 U.S.C. § 1842(d)(2)(B)-(D).

would control less than 30 percent of total deposits held by insured depository institutions in Maryland, New York, or Pennsylvania.<sup>9</sup>

All other requirements of section 3(d) of the BHC Act are met. Allied Irish is adequately capitalized and adequately managed, as defined by applicable law. In addition, M&T's subsidiary banks have been in existence for the minimum time required by applicable state law.<sup>10</sup> In view of all the facts of record, the Board is permitted to approve the proposal under section 3(d) of the BHC Act.

#### Financial, Managerial, and Supervisory Considerations

The BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and banks involved in a proposal and certain other supervisory factors.<sup>11</sup> In assessing the financial and managerial strength of Allied Irish and its subsidiaries, the Board has reviewed information provided by Allied Irish, confidential supervisory and examination information, and publicly reported and other financial information.

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<sup>9</sup> Maryland's deposit cap is the same as that set forth in section 3(d)(2)(B) of the BHC Act. See Md. Code Ann., Fin. Inst. § 5-906(b) (Michie 2001) (30 percent). New York and Pennsylvania do not have deposit caps applicable to the proposal.

<sup>10</sup> N.Y. Banking Law § 142-a(1) (5 years). Maryland, Pennsylvania and West Virginia do not have minimum age requirements applicable to the proposal. The Board also has taken into account the record of compliance of the subsidiary depository institutions of Allied Irish and M&T with applicable state community reinvestment laws.

<sup>11</sup> One commenter expressed concern about the future prospects of the organizations under the proposal. Allied Irish has acknowledged it would be deemed to control M&T for purposes of the BHC Act and would be required to serve as a source of strength for M&T after consummation. See 12 C.F.R. 225.4(a)(1).

Since May 2002, Allied Irish has been subject to a written agreement with the Federal Reserve Bank of Richmond, the Maryland Commissioner of Financial Regulation, and the Central Bank of Ireland (the “Written Agreement”) that addresses matters related to foreign exchange trading losses resulting from the illicit activities of a trader employed by Allfirst Bank. Among other things, the Written Agreement required Allied Irish to conduct a comprehensive and timely review of its U.S. operations, including risk management and internal controls, and required Allied Irish to submit a plan to the three regulatory agencies for improving the oversight of its U.S. operations. The Board has carefully considered Allied Irish’s record of compliance with the requirements of the Written Agreement and concludes that its record is consistent with approval of this proposal.<sup>12</sup> The Written Agreement was lifted as of February 14, 2003, contingent on consummation of M&T’s acquisition of Allfirst.

Allied Irish’s capital levels exceed the minimum levels that would be required under the Basel Capital Accord, and its capital levels are considered equivalent to the capital levels that would be required of a U.S. banking organization. Based on all the facts of record, the Board concludes that the financial and managerial resources and future prospects of the organizations involved in the proposal are consistent with approval.

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<sup>12</sup> The Board also has carefully considered a comment requesting closer scrutiny of the application and notice in light of the foreign exchange trading losses. The commenter asserted that the questions associated with the management of Allied Irish were of greater concern because Allied Irish would be able to place four directors on the board of directors of M&T, thereby giving it more influence over M&T than it could exercise by virtue of its shareholdings alone. As noted above, the Board has carefully considered the record of Allied Irish’s management in complying with the terms of the Written Agreement.

Section 3 of the BHC Act also provides that the Board may not approve an application involving a foreign bank unless it is "subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in the bank's home country."<sup>13</sup> The home country supervisor of Allied Irish is the Central Bank of Ireland ("CBI"), which is responsible for the supervision and regulation of Irish financial institutions.

In approving applications under the BHC Act, the Board previously has determined that Irish banks, including Allied Irish, are subject to comprehensive consolidated supervision by the CBI.<sup>14</sup> In this case, the Board finds that the CBI continues to supervise Allied Irish in substantially the same manner as it supervised Irish banks at the time of those previous determinations. Based on this finding and all the facts of record, the Board concludes that Allied Irish continues to be subject to comprehensive supervision on a consolidated basis by its home country supervisor.

In addition, section 3 of the BHC Act requires the Board to determine that a foreign bank has provided adequate assurances that it will

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<sup>13</sup> 12 U.S.C. § 1842(c)(3)(B). Under Regulation Y, the Board uses the standards enumerated in Regulation K to determine whether a foreign bank that has submitted an application under section 3 of the BHC Act is subject to consolidated home country supervision. See 12 C.F.R. 225.13(a)(4). Regulation K provides that a foreign bank will be considered to be subject to comprehensive supervision or regulation on a consolidated basis if the Board determines that the bank is supervised and regulated in such a manner that its home country supervisor receives sufficient information on the worldwide operations of the bank, including its relationship to affiliates, to assess the bank's overall financial condition and its compliance with law and regulations. See 12 C.F.R. 211.24(c)(1)(ii).

<sup>14</sup> See Anglo Irish Bank Corporation, plc, 85 Federal Reserve Bulletin 587 (1999); Allied Irish Banks, plc, 83 Federal Reserve Bulletin 607 (1997).

make available to the Board such information on its operations and activities and those of its affiliates that the Board deems appropriate to determine and enforce compliance with the BHC Act.<sup>15</sup> The Board has reviewed the restrictions on disclosure in relevant jurisdictions in which Allied Irish operates and has communicated with relevant government authorities concerning access to information. In addition, Allied Irish previously has committed to make available to the Board such information on the operations of Allied Irish and its affiliates that the Board deems necessary to determine and enforce compliance with the BHC Act and other applicable federal law. Allied Irish also previously has committed to cooperate with the Board to obtain any waivers or exemptions that may be necessary to enable Allied Irish and its affiliates to make such information available to the Board. In light of these commitments, the Board concludes that Allied Irish has provided adequate assurances of access to any appropriate information that the Board may request. Based on these and all the facts of record, the Board concludes that the supervisory factors it is required to consider are consistent with approval.

#### Competitive Considerations

As part of the Board's review under section 3 of the BHC Act, the Board has considered carefully the competitive effects of the proposal in light of all the facts of record. As discussed in detail in the M&T Order, the Board concluded that the combination of M&T and Allfirst would not likely result in any significantly adverse effects on competition or on the concentration of banking resources in any of the banking markets in which M&T or Allfirst operate banks. Based on all the facts of record, the Board

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<sup>15</sup> See, e.g., 12 U.S.C. § 1842(c)(3)(A).

concludes that competitive considerations related to the M&T and Allfirst aspects of this proposal are consistent with approval for the reasons discussed in the M&T Order and incorporated herein.

Allied Irish operates a branch and M&T operates a bank in the Metropolitan NY-NJ-PA-CT banking market (“New York market”).<sup>16</sup> The Board has reviewed the competitive effects of the proposal in this banking market in light of all the facts of record, including the number of competitors that would remain in the market, the relative share of total deposits in depository institutions in the market (“market deposits”)<sup>17</sup> controlled by Allied Irish and M&T, the concentration level of market deposits and the increase in this level as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Merger Guidelines (“DOJ Merger Guidelines”), and other characteristics of the market.<sup>18</sup>

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<sup>16</sup> The New York market is defined as New York City; Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, Sullivan, Ulster, and Westchester Counties in New York; Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union, Warren, and portions of Mercer Counties in New Jersey; Pike County in Pennsylvania; and Fairfield and portions of Litchfield and New Haven Counties in Connecticut.

<sup>17</sup> Market share data are as of June 30, 2002, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. See First Hawaiian, Inc., 77 Federal Reserve Bulletin 52 (1991).

<sup>18</sup> Under the DOJ Merger Guidelines, 49 Federal Register 26,823 (1984), a market is considered unconcentrated if the post merger HHI is under 1000. The Department of Justice has informed the Board that a bank merger or acquisition generally will not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. The Department of Justice has stated that the higher than normal HHI thresholds for screening bank mergers for anticompetitive effects implicitly recognize



Allied Irish's New York branch controls deposits of \$1.5 billion, representing less than 1 percent of market deposits. M&T operates the 20<sup>th</sup> largest depository institution in the market, controlling deposits of approximately \$4.1 billion, representing less than 1 percent of market deposits. On consummation of the proposal, Allied Irish would control deposits of \$5.6 billion. The market would remain unconcentrated under the DOJ Merger Guidelines and the HHI (907 points) would remain unchanged. Based on all the facts of record, the Board concludes that consummation of the proposal would not result in any significantly adverse effects on competition or on the concentration of banking resources in the New York market or in any other relevant banking market.

#### Convenience and Needs Considerations

In acting on proposals under section 3 of the BHC Act, the Board is required to consider the effect of the proposal on the convenience and needs of the communities to be served.<sup>19</sup> The Board has carefully reviewed the effect of the proposal on convenience and needs considerations in light of all the facts of record, including comments received on the proposal and the records of performance of the relevant depository institutions under the Community Reinvestment Act ("CRA").<sup>20</sup> In the M&T Order, the Board reviewed the records of CRA performance of the relevant insured depository institutions and considered other information relating to the convenience and needs factor. Based on all the facts of record, the Board concludes that convenience and

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the competitive effects of limited-purpose lenders and other nondepository financial institutions.

<sup>19</sup> 12 U.S.C. § 1842(c)(2).

<sup>20</sup> 12 U.S.C. § 2901 et seq.

needs considerations are consistent with approval for the reasons discussed in the M&T Order and incorporated herein.

#### Nonbanking Activities

Allied Irish also has filed notice under section 4(c)(8) and (j) of the BHC Act to acquire nonbanking subsidiaries of M&T. The Board has determined by regulation that the types of activities for which notice has been provided are closely related to banking for purposes of section 4(c)(8) of the BHC Act and, therefore, permissible for bank holding companies.<sup>21</sup>

To approve this notice, the Board must determine that the proposed activities “can reasonably be expected to produce benefits to the public . . . that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.”<sup>22</sup>

As part of its evaluation of the public interest factors, the Board considers the financial condition and managerial resources of the notificant and its subsidiaries, including the companies to be acquired, and the effect of the proposed transaction on those resources. For the reasons noted above, and based on all the facts of record, the Board has concluded that financial and managerial considerations are consistent with approval of the proposal.

The Board also has considered the competitive effects of the proposed transaction under section 4 of the BHC Act. Allied Irish and M&T compete in providing credit-related insurance and financial and investment advisory services. The markets for these nonbanking activities are regional,

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<sup>21</sup> See 12 C.F.R. 225.28(b)(6) and (11).

<sup>22</sup> 12 U.S.C. § 1843(j)(2)(A).

national, or international in scope and are unconcentrated. The record in this case also indicates that there are numerous providers of these services.

Based on all the facts of record, the Board concludes that consummation of the proposal would have a de minimus effect on competition for the relevant nonbanking activities.

The Board concludes that the conduct of the proposed nonbanking activity within the framework of Regulation Y and Board precedent is not likely to result in adverse effects, such as undue concentration of resources, conflicts of interests, or unsound banking practices, that would outweigh the public benefits of the proposal, such as increased customer convenience and gains in efficiency. Accordingly, based on all the facts of record, the Board has determined that the balance of public interest factors that the Board must consider under the standard in section 4(j) of the BHC Act is consistent with approval of Allied Irish's notice.

### Conclusion

Based on the foregoing, and in light of all facts of record, the Board has determined that the applications and notice should be, and hereby are, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors it is required to consider under the BHC Act and the IBA. The Board's approval is specifically conditioned on compliance by Allied Irish with all the commitments and representations made or relied on in connection with the application and notice and with the conditions stated or referred to in this order. The Board's determination also is conditioned specifically on the Board's receiving access to information on the operations or activities of Allied Irish and any of its affiliates that the Board determines to be appropriate to assess and enforce compliance by

Allied Irish and its affiliates with applicable federal statutes. The Board's determination on the nonbanking activities also is subject to all the terms and conditions set forth in Regulation Y, including those in sections 225.7 and 225.25(c) (12 C.F.R. 225.7 and 225.25(c)), and to the Board's authority to require such modification or termination of the activities of a bank holding company or any of its subsidiaries as the Board finds necessary to ensure compliance with, and to prevent evasion of, the provisions of the BHC Act and the Board's regulations and orders thereunder. For purposes of this action, the commitments and conditions relied on by the Board in reaching its decision are deemed to be conditions imposed in writing in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

The acquisition of up to 25 percent of M&T may not be consummated before the fifteenth calendar day after the effective date of this order, or later than three months after the effective date of this order, unless such period is extended for good cause by the Board or the Federal Reserve Bank of Richmond, acting pursuant to delegated authority.

By order of the Board of Governors,<sup>23</sup> effective March 11, 2003.

(signed)

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Robert deV. Frierson  
Deputy Secretary of the Board

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<sup>23</sup> Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Gramlich, Bies, Olson, Bernanke, and Kohn.